

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

TIFFANY LYNN REICHARD,

Defendant-Appellant.

Michigan Supreme
Court No.: 157688

Court of Appeals
Docket No.: 340732

Jackson County Circuit
Court No.: 16-005052-FC

JACKSON COUNTY PROSECUTOR
Attorney for the Plaintiff-Appellee

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**DEFENDANT-APPELLANT'S
REPLY BRIEF**

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REPLY ARGUMENT

The rationale for the murder exception to the duress defense is that no one has a right to choose to kill an innocent person in order to save their own life. But no one has argued that Reichard made such a choice, and where the rationale *for* the exception does not apply, the *exception* should not apply. Justice is not furthered by denying the accused an instruction on what the prosecution has conceded will be admissible evidence at trial.

This is the central concern of this appeal and the prosecution's brief, and the Opinion it rests on, fails to address it.

Beatty's depravity, which the prosecution lingers over in gruesome detail,¹ *supports* Reichard's position. Reichard was beaten and sexually abused by Beatty who coerced her into helping him do his *armed robbery*. The fact that Beatty held two weapons *as he did so*, as the prosecution notes in their Answer, is consistent with Reichard being under duress. It never occurs to the prosecution that Beatty's display of the weapons was *for Reichard*.

The fact that the trial court speculated that he might be reversed is irrelevant.² He was making a decision on an open question of law and was guided by the compelling and unusual facts that the case presented.

How the prosecution can state that *Carp* is "directly on point" with our case is baffling.³ The defense has no problem with Justice Zahra's decision in *Carp* which states that the defendant in *Carp* actively participated in violently killing the victim; striking his head with an object, closing drapes to conceal what was occurring, holding him down and supplying a knife that his accomplice used to kill the victim in Carp's presence.

To describe *Carp* as "directly on point" radically misunderstands the issue before this Court.

¹ See Appellee's Answer at 2.

² See Appellee's Answer at 2-3.

³ See Appellee's Answer at 3.

No case cited by the prosecution, or the Court of Appeals, is on-point. In each, the defendant was the *direct instrument* of the victim's death. In *Gimotty*, the defendant drove a car into the victim. In *Henderson*, the defendant fired a gun at the victim. No one has claimed that Reichard *knew* Beatty intended to commit murder or great bodily harm, or that *she* had that intent, or that she was *present* when the murder occurred.

In any event, as the Court is aware, it is not required to defer to an unpublished *or* published opinion of the Court of Appeals.

The prosecution then returns to *Aaron*, a case the Court of Appeals Opinion never cites.⁴ The defense devoted §III of its application to this subject. The duress defense directly responds to the prosecution's *willful or wanton disregard* theory of malice. Our argument is not, "Reichard acted with malice but was under duress," it is "Reichard was *not* acting in a willful or wanton way *because* she was under duress."

Contrary to the prosecution's argument, felony murder is not a form of second-degree murder, it is a form of first-degree murder.⁵

The prosecution mischaracterizes our citation to *Merhige*.⁶ We stated that *Merhige* is, "not on point," and we fairly cited it for how *other* Court's and two leading legal treatises have interpreted it. Appellant's *Application* at §V-A, B.

The defense *has* explained how Reichard will be harmed if the Court of Appeals opinion stands. The prosecution concedes that, "Defendant may present whatever evidence she wants to show that she did not have the requisite malice,"⁷ but fails to recognize that, under the Court of Appeal's opinion, Reichard will not be allowed *an instruction* on her defense. Reichard is being effectively

⁴ See Appellee's *Answer* at 4.

⁵ See Appellee's *Answer* at 4.

⁶ See Appellee's *Answer* at 4-5.

⁷ See Appellee's *Answer* at 5.

denied her constitutional right to present a defense at trial.⁸

Few rights are more fundamental than the right to present a defense.⁹ The Fifth and Sixth Amendments entitle a defendant to a jury instruction on any recognized defense for which there is evidentiary support.¹⁰ The United States Supreme Court has held that instructions should convey the required consciousness of wrongdoing.¹¹ Only the duress instruction can do that under the facts presented in this case.

The prosecution mischaracterizes Reichard's position when it argues, "That defendant not be allowed to claim both that she did not have the requisite malice and that, even if she did, she did what she did under duress."¹² The defense has never argued that, "if Reichard had malice, it was under duress." We have argued that Reichard should be allowed to rebut the claim of malice *by showing* that she was under duress. Only by obfuscating our argument can the prosecution assert that the defense 'does not matter.'

The defense has complied with the court rules. The applicable rule being MCR 7.305(B) not MCR 7.205(B)(1).¹³

Conclusion

Where the rationale for the murder exception to the duress defense does not apply, there is no principled reason to apply the exception. "[D]uress is no defense to the intentional taking of life by the threatened person; but it is a defense to a killing done by another in the commission of some lesser felony participated in by the defendant under duress."¹⁴

⁸ *People v. Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006)

⁹ *Chambers v. Mississippi*, supra., 410 US 284 (1973).

¹⁰ *Mathews v. United States*, 485 US 58 (1988)

¹¹ *Arthur Andersen, LLP. v. United States*, 544 US 696 (2005)

¹² See Appellee's Answer at 5-6.

¹³ See Appellee's Answer at 6.

¹⁴ LaFave, Substantive Criminal Law, Section 5.3(b) at 618 (West Publishing Company 1986)

SUMMARY AND RELIEF REQUESTED

WHEREFORE, for the foregoing reasons offered under MCR 7.305(E), and those set forth in her application, Defendant-Appellant, Tiffany Lynn Reichard, respectfully requests that this Court grant the relief requested in her application.

Respectfully submitted,

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